IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 285 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HDFC BANK THROUGH ITS AUTHO.OFFICER - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR CR ABICHANDANI for Applicant(s) : 1,
MR UR BHATT ADDTIONAL PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 16/04/2007

ORAL JUDGMENT

1. Heard learned advocate Mr. C.R. Abichandani for the applicant and learned A.P.P. Mr. U.R.

Bhatt for the State.

2. Rule. Learned A.P.P. Mr. U.R. Bhatt waives service of Rule on behalf of the State. Though, the Rule is served to respondent No.2, he is not present before the Court. The present application is file to get permission to sale of the TATA Indica Car No.GJ-18AA-0442 belonging to Mr. Rajesh Anantkumar Soni, respondent No.2. The applicant, bank sanctioned loan of Rs.2.10 Laksh to respondent No.2 for purchasing said Indica car in March, 2004. The said loan was to be paid by respondent No.2 in 36 installments, but he has failed to make the payment according to the agreement of installments fixed by the bank and respondent No.2 has made payment for only 3 installments. The cheques were bounced, which were handed over towards the 33 installments.

3. The Court of learned J.M.F.C., Muli, Surendranagar handed over the possession of the said vehicle Car to the bank by passing order

dated 23.5.2005 by imposing certain conditions. Thereafter, the present applicant bank approached the Court of learned J.M.F.C., Muli, Surendranagar for obtaining permission to sale the said Indica Car by way of filing Criminal Case No.317 of 2004, whereby the learned Judge has rejected the said application on 13.1.2006. Against the said order, the applicant has preferred Criminal Revision Application No.3 of 2006 before the learned Sessions Court, Surendranagar. The learned Sessions Judge by his order dated 30.12.2006 was pleased to reject the said application. It seems that respondent No.2 has no objection to hand over the custody of the Indica Car. If the permission to sell the said car would not be given then the Muddamal vehicle would be damaged and price of the said vehicle will be decreased by day after day. The bank has recover the dues to the tune of Rs.3.5 Lakhs. Therefore, the custody of the said Indica car is required for recovering of dues and hence, the conditions, which prohibit the bank for selling the said car.

4. In view of above, the order passed the learned Sessions Judge, Surendranagar in Criminal Revision Application No.3 of 2006 on 30.12.2006, whereby confirming the order of the learned J.M.F.C., Muli, Surendranagar in Criminal Case No.317 of 2004 on 13.1.2006 as well as the order of the learned J.M.F.C., Muli are hereby quashed and set aside.

5. In view of the above discussion, the application of the present applicant is allowed and permission is granted to sell the TATA Indica Car No.GJ-18AA-0442 to the applicant on following conditions:

(i) The bearing TATA Indica Car No.GJ-18AA-0442 be handed over to the petitioner on his furnishing an indemnity bond of Rs.1,00,000/- (One Lac) and personal bond of the like amount.

(ii) The photographs of the said vehicle from different angles shall be taken by the petitioner in presence of the Court Commissioner that may be

appointed by the Court. The said photographs be kept on the record of the case. The expenses in this regard to be borne by the petitioner.

(iii) The Court Commissioner so appointed by the Court shall prepare a panchnama of the vehicle in question which may also be kept on record of the case.

The Application is accordingly allowed. Rule is made absolute. Direct service is permitted.

(M.D. SHAH, J.)

ynvyas